

STATE OF MICHIGAN
COURT OF APPEALS

In re MARTENKA, Minors.

UNPUBLISHED
December 20, 2018

No. 343982
Wayne Circuit Court
Family Division
LC No. 17-000567-NA

Before: CAVANAGH, P.J., and SERVITTO and CAMERON, JJ.

PER CURIAM.

Respondent, the father of the minor children, appeals as of right the trial court's order terminating his parental rights to his children pursuant to MCL 712A.19b(3)(a)(*ii*), (c)(*i*), (g), (j), and (k)(*i*). We affirm.

In April 2017, the trial court exercised jurisdiction over the children, whose mother had left them in the care of their maternal grandmother with no indication of when she would return. The relationship between the mother and respondent was plagued by domestic violence. Respondent resided in a motel, worked long hours, used marijuana, and suffered from depression as a result of the couple's breakup. A treatment plan required respondent to attend parenting, anger management, and domestic violence classes, submit to weekly random drugs screens, complete a substance abuse assessment and psychological evaluation, and obtain housing and a legal source of income. Respondent was permitted to have supervised visitation with the children.

Respondent visited with his children in June 2017, but then left the state, purportedly to join the military in South Carolina. However, respondent did not follow through with his plans. Although he returned to Michigan, he did not contact the foster care caseworker or visit his children. Instead, he was arrested and jailed for two months. Although respondent thereafter maintained contact with his probation officer, he did not participate in services to address the requirements of his treatment plan or contact his caseworker. In light of respondent's complete absence from his children's lives for nearly a year, the trial court found that the statutory grounds for termination were satisfied and that termination of his parental rights was in the children's best interests. Respondent appeals that decision.

"To terminate parental rights, a trial court must find by clear and convincing evidence that at least one statutory ground under MCL 712A.19b(3) has been established." *In re Moss*, 301 Mich App 76, 80; 836 NW2d 182 (2013). "We review for clear error a trial court's finding of whether a statutory ground for termination has been proven by clear and convincing

evidence.” *Id.*; see also MCR 3.997(K). “A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court’s special opportunity to observe the witnesses.” *In re Laster*, 303 Mich App 485, 491; 845 NW2d 540 (2013) (citation omitted). This Court reviews de novo the trial court’s selection, interpretation, and application of the relevant statutory provisions. *In re Gonzales/Martinez*, 310 Mich App 426, 431; 871 NW2d 868 (2015).

Respondent acknowledges that the trial court found that statutory grounds for termination were established under MCL 712A.19b(3)(a)(ii), (c)(i), (g), (j), and (k)(i). In his brief on appeal, respondent asserts “that clear and convincing evidence probably existed in the trial [court] warranting termination under the aforementioned statutes in that the parents did literally nothing, or as the Referee stated, ‘absolutely nothing’ on their treatment plan.” We agree that the trial court did not clearly err in finding that the statutory grounds for termination were supported by clear and convincing evidence.

Respondent’s principal argument is that the trial court erred in finding that termination of his parental rights was in the children’s best interests. “If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child’s best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made.” MCL 712A.19b(5). “We review a trial court’s decision regarding a child’s best interests for clear error.” *In re Laster*, 303 Mich App at 496.

“[W]hether termination of parental rights is in the best interests of the child must be proved by a preponderance of the evidence.” *In re Moss*, 301 Mich App at 90. All available evidence should be weighed to determine a child’s best interests. *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014). The best-interest determination focuses on the child, rather than the parent. *In re Schadler*, 315 Mich App 406, 411; 890 NW2d 676 (2016). Factors to consider include the child’s bond to the parent, the parent’s parenting skills, the child’s need for permanency, stability, and finality, the advantages of a foster home over the parent’s home, and the child’s placement with relatives. *Id.* The trial court must explicitly address whether termination is appropriate when a child is placed with relatives. *Id.* However, a child’s relative placement is just one factor to consider, and the placement will not weigh against termination when the parent fails to make necessary changes to address substance abuse and mental health issues. See *In re Gonzales/Martinez*, 310 Mich App at 434-435. The interests of each individual child must be addressed if their best interests significantly differ. *In re White*, 303 Mich App at 715.

In this case, the trial court did not clearly err by finding that termination of respondent’s parental rights was in the children’s best interests. The children were brought into care because their mother left them with their maternal grandmother. Both parents had substance abuse, housing, and domestic violence issues. A parent-agency treatment plan was executed, but respondent failed to make any effort to comply. Rather, he left the state, premised on his plan to join the military, but then abandoned that plan and returned to Michigan. After returning to Michigan, respondent failed to visit with his children and failed to contact the caseworker or participate in services. Although his attorney suggested that respondent may have been unable to make contact with the caseworker, there was no evidence to support this. Indeed, after

respondent returned to Michigan, he was arrested and served two months in jail. Although he thereafter maintained contact with his probation officer, he failed to seek out his caseworker.

Respondent contends that termination of his parental rights was not in the children's best interests in light of their relative placement, and he argues that the court erred by failing to expressly address the best interests of each child individually. However, the individual interests of each child did not vary. Both children were less than three years of age and in placement with their maternal grandmother. Therefore, the court was not required to individually address each child's best interests. See *id.* Additionally, the relative placement did not outweigh termination of respondent's parental rights. Respondent's complete failure to comply with his treatment plan meant that he did not address the substance abuse, housing, and violence issues that caused the children's removal in the first place. Both children had special needs that respondent was not capable of addressing, but which were being addressed in their placement with their grandmother. The oldest child's walking issues resolved; the youngest child's speech issues improved upon his placement in daycare, but his grandmother continued to pursue additional services at the University of Michigan. The children's placement provided them with the safety and stability that they needed and deserved.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Deborah A. Servitto
/s/ Thomas C. Cameron